

Fact Sheet on 4/24/18 Natural Resources Defense Council (NRDC) and Newark Education Workers (NEW) Caucus Notice of Intent to Sue NJDEP over Failure to Properly Implement the Lead and Copper Rule

5/1/18

EPA Position:

Newark had been below the EPA 15 ppb lead treatment technique level specified in the lead and copper rule (LCR). Based on lessons learned from Flint Michigan and EPA File Reviews and Inspections (**check with DECA**) NJ realized that implementation of the LCR by public water systems in the state was inadequate because correct sampling sites were not being used, proper documentation was not being maintained or available, in some cases, to determine if optimal water quality parameters were designated and if corrosion control was being optimized. In response NJDEP developed an action plan to correct the identified deficiencies and required public water systems to begin anew with the LCR. In 2017 Newark collected required LCR samples at new, correct locations, which resulted in an action level exceedance (ALE).

EPA is reviewing the claims contained in the NOI. However, it appears the claims are based on past implementation deficiencies that NJ is addressing with corrective actions through implementation of their 11/16 LCR Corrective Action Plan. NJDEP and Newark are doing what is required based on their 2017 ALE. It is important to note that Newark was not included in the 4/16 EPA file review because Newark didn't have an ALE at that time.

Plaintiffs: NRDC and NEW Caucus

Defendants: City of Newark and NJDEP

NRDC/New Caucus Claims:

1. Newark residents are exposed to dangerous levels of lead in the City's drinking water
2. City and State officials are in violation of the Safe Drinking Water Act's Lead and Copper Rule
3. The City's violation of the requirement to complete a materials evaluation, including an inventory of its lead service lines
4. Acting Commissioner of NJDEP's failure to designate optimal corrosion control treatment for the City in violation of the Lead and Copper Rule
5. Acting Commissioner of NJDEP's failure to designate optimal water quality parameters for the City in violation of the Lead and Copper Rule

Background on Newark Public Water System (NJ0714001)

- Population Served: 273,000
- Essex County
- Drinking Water Source/Distribution:
 - Surface Water (Pequannock River Intake off the Charlotteburg Reservoir)
 - Purchases water from NJDWSC Wanaque North (NJ1613001)
 - Sells water to Belleville Water Dept. (NJ0701001)

- Treatment:
 - Direct Filtration at Pequannock Treatment Plant, coagulation, gas chlorination, pH adjustment and silicate inhibitor for corrosion control
 - Filtration at Little Falls Bypass
 - Finished water storage at Cedar Grove Reservoir (**uncovered reservoir issue?**)
- Lead 90th Percentile Results (2015-2017):
 - 10 ppb (01/01/2013 to 12/31/2015)
 - 27ppb (01/01/2017 to 06/30/2017)
 - 26.7ppb (07/01/2017 12/31/2017)
 - Newark was on triennial monitoring until they exceeded the ALE and now they are on 6 month sampling. Next sampling due **XXX**
- System Violations (2015-2017): **All violations have been returned to Compliance.**

Violation Type	Contaminant Name	Result (ug/l)	Compliance Period Begin Date	Compliance Period End Date
Maximum Contaminant Level Violation, Average	TTHM	84.4	01-Jul-15	30-Sep-15
Monitoring, Repeat Major (TCR)	Coliform (TCR)		01-Nov-15	30-Nov-15
Maximum Contaminant Level Violation, Average	TTHM	86.0	01-Oct-15	31-Dec-15
Maximum Contaminant Level Violation, Average	TTHM	90.0	01-Jan-16	31-Mar-16
Treatment Technique (SWTR and GWR)	Surface Water Treatment Rule		01-Nov-15	30-Nov-15
Treatment Technique (SWTR and GWR)	Surface Water Treatment Rule		01-Dec-15	31-Dec-15
Treatment Technique (SWTR and GWR)	Surface Water Treatment Rule		01-Jan-16	31-Jan-16
Treatment Technique (SWTR and GWR)	Surface Water Treatment Rule		01-Feb-16	29-Feb-16
Maximum Contaminant Level Violation, Average	TTHM	82.0	01-Apr-16	30-Jun-16
Consumer Confidence Report Complete Failure to Report	Consumer Confidence Rule		01-Jul-16	
Water Quality Parameter M/R	Lead and Copper Rule		01-Jul-16	31-Dec-16
Monitoring, Regular	CYANIDE		01-Jan-17	31-Dec-17

EPA Oversight on NJDEP LCR Implementation:

Note: Need DECA input

- April 2016: Region 2 conducted a lead and copper rule (LCR) file review on 55 small and medium PWSs at NJDEP with action level exceedances (ALEs).

- September 2016: EPA issued LCR Program Review report for NJ:
Findings: Inconsistently determining compliance and entering violations in the Safe Drinking Water Information System (SDWIS), need to document implementation, need to evaluate sampling pools/plans to ensure PWS are collecting samples from appropriate locations.
- Based on NJDEP file review, Region 2 provided the following 6 recommendations:
 - Address deficiencies found in the review by updating Action Plan
 - Approve and document all WQPs and CCT approvals within 6 months
 - Document Tier 1 sites and tap sampling plans within 6 months
 - Report all missing violations to SDWIS
 - File all approved WQPs and CCT documents appropriately
 - Create implementation schedule for follow-up of recommendations
- November 2016: NJDEP submitted a response and a corrective action plan.
- December 2016: Evaluation of large systems completed
- October 2017 (current): The corrective action plan is currently being implemented, and includes the evaluation of all sampling pools and Water Quality Parameters (if applicable) for all systems in NJ.

In general, the following holds:

- Most discrepancies involve items not found in files relating to PWS-required actions to be taken post-ALE, typically missing WQPs, initial source water monitoring, PE certifications, OCCT recommendations and any necessary treatment installation verifications. Sampling plans were also not included in many cases.
- Other deficiencies involved consistent determination and reporting of violations for the missing required items indicated, several instances of invalidation decisions that didn't appear to meet the allowable criteria to do so.
- States must do a better job in tracking the various activities required in response to an ALE.
- States must maintain data and upgrade response to lack of compliance in a timely manner.

Next steps: